IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2308 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYABEN HIMATLAL VASA

Versus

DHORAJI MUNICIPALITY

Appearance:

1. Special Civil Application No. 2308 of 1989

MR PV HATHI for Petitioner No. 1

MR BA VAISHNAV for Respondent No. 1

Mr.U.R.Bhatt, AGP for Respondent No. ,2-3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 22/01/2003

ORAL JUDGEMENT

1. The petitioner who was formerly an employee of

the respondent no.1-Dhoraji Municipality has approached this Court with this petition under Article 226 of the Constitution of India seeking indulgence in the form of a direction to the respondent no.1 to make payment of her dues with interest and has sought the following reliefs:

"(A) to allow the petition with costs;

(B) to direct the respondent no.1-Municipality to make payment of the entire amount which remains due and payable to the petitioner together with interest at the rate of 12% on and from 1st September, 1988, within the time that may be specified by this Hon'ble Court;

(C) to direct the respondents nos.2 and 3 to take appropriate actions against the respondent no.1- Municipality as provided under the provisions of the Gujarat Municipalities Act;

(D) to issue interim mandatory direction, directing the respondent no.1-Municipality to make payment of the amount of Rs.78,133/- or the amount of Provident Fund of Rs.41,691/- as per statement Annexure "B" together with interest at the rate of 12% per annum within fifteen days from the date of the order, pending the hearing and final disposal of this petition.

(E) to pass such other order or orders as the nature and circumstances of the case may require."

2. She superannuated on August 31, 1988 from the service. As can be seen from Annexure "A", her retiral dues including provident fund, gratuity, leave pay etc. were not paid by the respondent no.1. The payable amount due from the respondent no.1 to the petitioner as per the say of the petitioner was Rs.91,372/-, out of which, an amount of Rs.10,308/- was paid in three installments and actual amount due is Rs.81,064/-.

3. Heard learned Advocate Mr.Hathi for the petitioner. He submitted that for no fault on the part of the petitioner, her legitimate dues were not paid by the respondent no.1.

4. Learned Advocate Mr. Vaishnav appearing for the respondent no.1 states on instructions that dues of the petitioner have been paid to her in 1992, and therefore, nothing remains to be done. The petition may, therefore, be disposed of accordingly.

5. Learned Advocate Mr. Bhatt appears for the respondents nos.2 and 3. No affidavit-in-reply is filed by any of the respondents.

6. Having considered the contentions raised before this Court, it appears that the petitioner was not paid her retiral dues on her retirement in 1988. Even if the statement made by learned Advocate Mr. Vaishnav is accepted, the payments are made after almost four years in 1992. The nonpayment of amount also includes nonpayment of money due on account of provident fund also. In a similar situation, this Court has made certain observations in Special Civil Application no.1301/1989 which may be reproduced herebelow:

"This is a case where the amount of Provident Fund has not been paid. Meaning thereby, the municipality has not kept this amount in the account and the same was misappropriated and utilized for some other purpose. This is a very serious matter but it is unfortunate that the District Collector and the Director of the Municipalities are not taking any action and left the employee at the mercy of the God. This approach of the Collector and Director Municipalities deserves to be deprecated. It is unfortunate on the part of the employees more so the citizens of the country despite of the fact that highly paid officers are there and a substantial amount of the total revenue of the Government goes towards the payment of the salaries, these officers are not taking any care for their duties and the responsibilities. The Municipality is at fault, no doubt but equally the officers, who have supervising powers over it are equally responsible for all these things and the State of Gujarat should have taken action against those officers also. Be that as it may, the facts stated in this Special Civil Application are to be taken as correct as the same are not controverted by the respondents."

7. The petitioner has suffered for no fault of hers and it would be appropriate if respondent no.1 is directed to pay interest on the amount due to her atleast for the period till payment is made. The petitioner has prayed for interest at the rate of 12% per annum which was the prevalent rate of interest then.

8. The petition, therefore, must succeed. The petition is allowed. The respondent no.1 is directed to pay the amount of retiral benefits or other benefits due to the petitioner with interest at the rate of 12% per annum from 1-9-1988 till the date of payment within a period of two months from the date of receipt of writ of this order. After computing the amount as directed above, whatever amount is paid to the petitioner will be deducted therefrom, and the rest of the amount would be paid to the petitioner. The respondent no.1 shall pay an amount of Rs.1000/- towards costs of this petition to the petitioner alongwith the above amount. Rule is made absolute accordingly.

(A.L.Dave,J.)

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